

Declaratory Resolution.

No. 38.

For the Opening of
Fourth Street
from Calhoun street
to Clinton street.

Adopted March 3^d 1898.

Hearing March 24th 1898.

Res. confirmed March 24th 1898.

Rescinded Oct 19th 1899.

Department of Public Works,

Office of the Board, Room No. 2 City Hall.

Fort Wayne, Indiana, March 3, 1898.

"OPENING AND EXTENDING OF FOURTH STREET"

Declaratory Resolution *No 38,*

1898.

Resolved by the Board of Public Works of the City of Fort Wayne, Indiana, that it is desired and deemed necessary to extend and open Fourth street in the City of Fort Wayne, Allen County and State of Indiana from the east property line of North Calhoun street to the west property line of North Clinton street. Said ~~extending~~ *Extension* and opening to have a width of 50 feet to be made by condemning and appropriating for street purposes a strip of land described as follows, to-wit:

Commencing at a point on the east line of north Calhoun street 50 feet east of the northeast corner of lot No. 142 Northside Addition to the City of Fort Wayne, Allen County, Indiana, thence east on the south line of Fourth street as laid out in the said Northside Addition produced east, to the west line of north Clinton street, thence north 50 feet on the west line of Clinton street; thence west parallel with the south line of said Fourth street as above described to the east line of north Calhoun street thence south on the east line of Calhoun street 50 feet to the place of beginning.

The above described tract of land being a part of lot No. 6 Wells Reserve situated in Township 30 North Range 12 East of the Second Principal Meridian of Indiana.

All as shown by the plan of such proposed ~~extending~~ *Extension* and opening of Fourth street, above described now on file in the office of the Board of Public Works of said city. The property which may be

~~be~~ injuriously or beneficially affected by the extending and opening of Fourth street as above described is described as all parcels and lots of land not occupied by streets or alleys lying west of the east line of City Park Addition, north of the St. Marys river, east of St. Marys Avenue, and south of Archer Avenue and the north line of the land known as the Catholic Orphan Asylum ground. Also all lands "including the right-of-way" of the Fort Wayne Jackson & Saginaw Railroad Company, ^{the} Fort Wayne & Jackson Railroad Company, and the Lake Shore and Michigan Southern Railroad Company, lying west of Clinton street, north of ^{the} St. Marys river, east of Calhoun street, and south of the Canal Feeder. All of said streets and lots and parcels of land being located in the City of Fort Wayne, Allen County, Indiana.

Adopted this 3d day of March, 1898.

Attest:

Alb. Schuick
clerk.

Peter Eggemann

P. H. K. K. K.

J. M. Cracker
Board of Public Works.



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To the Honorable Board of Public Works,

Of the City of Fort Wayne, Indiana.

Gentlemen:

The undersigned are resident tax payers of the ninth ward of Fort Wayne. We are informed that another effort is being made to locate, open and extend Fourth street across the yards of the Lake Shore & Michigan Southern Rail Road.

Several attempts at this have been made, involving large expense, all of which have failed. Should the proposed one succeed it will be at a large cost to all the tax payers of the said ward.

We are informed that a crossing can be had at Third street answering all necessary purposes, and without litigation or difficulty.

We desire to enter our protest against this effort to open Fourth street, and are opposed to contributing anything towards the same.

B. F. Fink Joseph Gueth New Regulars Phil & Hermann Joseph & Hingler Mrs. Grubel Hans Schumann Mrs. Schumann David Hill Mrs. Porsch Hermann Schumann Kott. E. Kott. Frank Dabbers J. L. L. L.	- 6. 1. 1. 3. 4. Jos. Stüder H. H. H. H. F. J. H. H. A. H. H. H. G. H. H. H. J. H. H. H. Frank & Kropp Ben. W. W. W. Geo. E. W. W. H. H. H. H. J. H. H. H. L. H. H. H. W. H. H. H.
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[illegible]

F. J. Brumett	Daniel Thierman
F. C. Berg	Pauline Schoenherr
Mrs. A. Model	W. Berger, Wm.
Red. Schuman	M. R. Gardner
Mrs. Katherine Auth.	Mrs. Mary Kack
M. W. Jones	Eliza Kack
George W. Jones	W. J. Schirch
Thodore Krier	Mathias Kierck
George W. Krier	John Krier
Daniel Walker	Frank Krier
Mrs. Mary Stier	Louisa Engelking
John Th. Stier	Mrs. William Engel (widow)
Michael Eblman	Friedrich Melsch
George J. Beerlein	Ernst M. Schmitt
Michael Weipert	John. Bauer
Christian Kierck	Henry Schoephorst
W. Kierck	John. Kierck
Maik Masowen	Charles Lurman
Aug. W. Kierck	Conrad Kierck
John W. Kierck	John W. Kierck
Mrs. S. Kierck	Augusta Kierck
St. Lindner	Ernst W. Elliott
John W. Kierck	John W. Kierck
W. Kierck	John W. Kierck
John Hopmann	Carrie Stall
W. C. Everett	Mrs. Puffin, widow
Tessie Biedler	Conrad Kierck
Frederick Kierck	John W. Kierck
Mrs. Bueglat	Wm. Kierck
Michael Freimüller	Wm. Kierck, widow
John W. Kierck	Wm. Kierck, widow
Wm. Kierck	Wm. Kierck, widow
William Biscoll	Wm. Kierck, widow
Kyle Cassill	Wm. Kierck, widow
Jesse N. Kelsey	Wm. Kierck, widow

Filed March 24th
1898.

To the Honorable Board of Public Works,
of the City of Fort Wayne.

Gentlemen:

The Fort Wayne and Jackson Rail Road Company and the Lake Shore & Michigan Southern Railway Company, lessee, desire hereby to respectfully protest ^{and remonstrate} against the proposed opening of Fourth street across the rail road tracks and yards of these remonstrants for the following amongst many other reasons:

The track was located, yards established, and freight house built and maintained with reference to the use of the premises for rail road purposes, and for freight and passenger depots, engine houses, shops, tracks, yards, etc., pursuant to a contract made with the City of Fort Wayne.

The proposed appropriation and extension of Fourth street across said yards, and its use as a street would substantially deprive these remonstrants of the use of all of said property for rail road purposes, and destroy its value therefor.

The yards are already too short, are continually occupied with cars and frequent passing trains, both freight and passenger. The proposed extension and crossing, if made, would be dangerous for use because of its location, as it would cross some eight or nine rail road tracks. By coming one square farther South and using Third street but two tracks would have to be crossed, and the danger in the use of the street largely diminished; and if Third street should be occupied substantial concession will be made to the City.

The said proposed appropriation and extension of Fourth street would seriously diminish the business of the rail road, and destroy and render useless their yards and depot house

By reason of the number of tracks and their necessary use in moving trains and transporting cars, the crossings thereon by said street would be exceedingly hazardous and dangerous to life for the public to travel on said street; that without the use and absolute control of said yards it will be impossible to operate said rail roads successfully and advantageously, and to abandon the yards, which said street extension as proposed would compel, would damage the rail road property in the sum of twenty thousand dollars (\$20000.00).

Such extension as proposed will destroy the use of said yards and depot grounds, and compel the purchase and construction of a new yard elsewhere at the cost of many thousand dollars, and will greatly enhance the cost of handling the cars and of operating the said rail road.

To extend said street as proposed across said tracks would render the present freight station and freight house and depot practically useless, and compel the abandonment thereof.

Said freight house as now located is situated near to the business center of the City of Fort Wayne and is easy of access, and freight to and from the same have to be carted and transported but a short distance from said business center, and by reason thereof a large volume of business is attracted to said rail road company.

By reason of the manner in which the adjacent territory on the West of the rail road is built up with houses; because of the St. Mary's River on the East and South; and of Spy Run Creek and the conformation of the lands lying North of the said freight house, the same, if removed at all, would have to be moved a great distance---at least one mile--farther away from the business center of Fort Wayne, and would greatly lessen and damage the remonstants' business.

The rail road yards in question are already limited in capacity and said proposed extension of Fourth street would greatly diminish the capacity of the yards and cut off and render practically useless at least one half of the yards and station grounds. To diminish the yards and station grounds to any extent would make the same too small and insufficient for their use and operation, and if diminished to that extent the rail road would be compelled, in order to be successfully operated, to remove the yards beyond and without the City of Fort Wayne.

There is no other location along the line of said rail road within the said city suitable for the purposes of yard and station grounds. The yards, and the freight and passenger depots have been located with reference to each other and within convenient distance of each other, and to remove the yards without the limits of the city of Fort Wayne the distance necessary to go in order to secure suitable ground therefor, would entail great expense.

The freight depot of the rail road is located about nine hundred feet South West from the proposed street on the line of the rail road, and the passenger station about twelve hundred feet therefrom---the freight depot being about six hundred feet from the extreme Southern limit of the yard and switches. The depot and station grounds are located with reference to each other for the convenience thereof and for the proper and successful operation of the rail road. The damage done to the yards in this respect would exceed the sum of ^{thousand} thirteen ~~thousand~~ dollars (\$13,000.00)

It would cost to construct new yards of similar capacity outside of the city of Fort Wayne, and located reasonably near thereto, not less than four thousand six hundred dollars (\$4600.00) in addition to purchasing the necessary property

therefor.

No other place besides that now used could be procured on the line of the rail road within the city which would be suitable for yard purposes for the company.

In the progress of a lawsuit growing out of a former attempt to thus open Fourth street across said yards, the foregoing facts and values and damages were each and all fully and substantially established by the sworn testimony of such persons as Charles D. Gorham, superintendent of the N. Y. C. & St. L. R. R. Co., Charles B. Hoyt, road master of the L. S. & M. S. Ry. Co., Phillip S. Blodgett, Gen. Supt., L. S. & M. S. Ry. Co., Henry A. Worcester, Supt. Lansing Division, L. S. & M. S. Ry. Co. and others of large experience and entirely capable of an accurate and trustworthy opinion.

It is further contended and cannot be disputed that the City of Fort Wayne agreed to convey and did convey to the railroad company the premises in question upon the express condition that it would run its line of road through the same and locate thereon its depots for local purposes, shops etc., and that the property would be annexed to and become part of the City of Fort Wayne---the last condition was doubtless in view of ^{the} levying and collection of taxes upon the increased valuation of the property.

All these conditions were performed by the rail road company. The transaction constituted a contract, which the parties were competent to make, upon adequate consideration and one which was made for the purpose of inducing the rail road company to expend large sums of money in the erection of buildings &c., and to locate the rail road with reference to position of the freight house and other buildings to be erected upon the property in question, and with reference to its location and the conformation of the surrounding territory, and the subsequent use to which the premises were to be put ~~to~~ and for which they

are still used.

Having induced the rail road company to so act the city now seeks to violate its contract; to force the rail road company to a like action and to practically destroy all the rail road property placed upon the premises pursuant to the contract with the city, and destroy its value for the use contemplated in its construction.

We contend that to permit this to be done by the city in view of its obligations and of all the facts would be outrageous, unjust and unequitable, and in gross violation of the contract of the parties, and we contend will never by the courts be permitted to be done.

The grant of twenty acres by the city, its acceptance by the rail road company, accompanied by a large expenditure of money constituted a contract protected by the Constitution of the United States, the obligation of which cannot be impaired by the Legislature of this state itself, directly or through any grant of power to the city to extend streets.

It is also contended that the existing law does not contemplate the destruction of property already subjected to public use by its appropriation for another and different public use.

This precise question is now pending before the Supreme Court and was sometime since elaborately argued, and it was hoped that any further attempt to make the street crossing in question would be postponed until these questions should be decided, and thus avoid further and expensive litigation.

If the present meeting should be adjourned for a sufficient time we believe it would be of great advantage to have the members of this Honorable Board visit the premises, examine the property, consider what is to be offered by persons thoroughly competent to speak, and act in view of all the facts

(6.)

involved, which can be made, we believe, to fully appear.

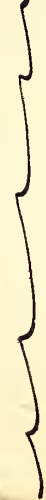
All of which is respectfully submitted.

Fort Wayne & Jackson Rail Road Company.

Lake Shore & Michigan Southern Railway Company.

By A. C. Bell . Attorney.

Ex R. Germany
of Fourth Street



Remonstrances by
For Weyns & Jackson
Railroad Company
et al.

Filed March 24th
1898.

